IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 10.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.1946 of 1999

The Sennampatty Milk Producers
Co-operative Society Ltd.,
Sennampatty - 638 504. … Appellant

vs.

1. The Presiding Officer,
Labour Court,
Coimbatore-641 018.

2. T.Dharmalingam ... Respondents

Appeal under Clause 15 of the Letters Patent against the order dated 24.08.1999 made by the learned single Judge in W.P. No.11590 of 1991. The petition presented to this Court under article 226 of constitution of India to issue a Writ of Certiorari to call for the records and to quash the award dated 6.5.1991 on the file of the 1st Respondent.

For Appellant : Mr.Sanjay Mohan,
for M/s.Ramasubramaniam Associates.

For R-2 : Mr.D.Hariparanthaman

J U D G M E N T

P. SATHASIVAM, J.

The above Writ Appeal has been filed against the order of the learned single Judge, dated 24.08.1999, in W.P. No.11590 of 1991, in and by which, the learned Judge confirmed the award passed by the Labour Court and dismissed the Writ Petition.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The second respondent, viz., T.Dharmalingam, was employed as Secretary of the Sennampatty Milk Producers' Co-operative Society Limited/Writ petitioner-appellant. He was suspended for misconduct on 27.09.1983. A show cause notice was issued on 21.06.1984 alleging that he had misappropriated a sum of Rs.1,429/-. The second respondent submitted his explanation. An enquiry was conducted and pursuant to the finding of the Enquiry Officer, the second respondent was dismissed from service on 23.08.1984. Aggrieved by the same, the second respondent raised an industrial dispute before the Labour Court, Coimbatore, in I.D.No.73 of 1985. Before the Labour Court, in view of the stand taken by the Workman, the issue with regard to validity of the domestic enquiry was taken up as preliminary issue. After hearing both the parties, the Labour Court reserved for orders. Before order was pronounced by the Labour Court on the preliminary issue regarding the validity of the domestic enquiry, an Application was filed by the petitioner/Society to reopen the preliminary enquiry. The Labour Court, by order dated 18.09.1991, reopened the enquiry. The petitioner filed I.A. No.258 of 1990 on 20.10.1990 seeking permission of the court to file an additional counter statement. The second respondent filed counter in I.A. No.258 of 1990 on 07.11.1990. By order dated 28.11.1990, the Labour Court dismissed the Application in I.A. No.258 of 1990, holding that the petitioner having failed to seek permission while filing counter, the same cannot be sought at a later stage by means of an additional counter statement. Thereafter, award was passed by the Labour Court on 06.5.1991 holding that the domestic enquiry conducted by the petitioner against the second respondent was vitiated and the second respondent was ordered to be reinstated with continuity of service and full back wages. Questioning the same, the Society filed the Writ Petition. The learned single Judge, by the impugned order dated 24.08.1999, after finding that the Management has not challenged the order in I.A. No.258 of 1990 by filing a separate writ petition and that no attempt has been made on the part of the Management to file an application, seeking permission of the Labour court to let in oral and documentary evidence; refused to interfere with the award passed by the Labour Court and dismissed the Writ Petition. Questioning the same, the Society has filed the above Appeal.

4. Heard Mr.Sanjay Mohan, learned counsel for the appellant/Society and Mr.D.Hariparanthaman, learned counsel for second respondent/Workman.

5. The only point for consideration in this Appeal is as to whether the Labour Court is justified in passing an award, ordering reinstatement of the 2nd respondent/Workman.

6. Mr.Sanjay Mohan, learned counsel for the petitioner vehemently contended that the learned Judge committed an error in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

holding that the order passed in I.A. No.258 of 1990 has not been challenged by way of a separate writ petition, when the order passed in the interim application is merged with the main award. He also contended that when the Management filed Application for letting in additional evidence, the Labour Court committed an error in not granting the same and that the learned single Judge also erred in dismissing the Writ Petition.

7. On the other hand, Mr.D.Hariparanthaman, learned counsel for the second respondent, would submit that even though industrial dispute has been raised by the workman as early as in 1985; the petitioner/Society failed to seek permission for leading additional evidence even while filing counter statement in the year 1990; hence, the Labour Court is fully justified in dismissing I.A. No.258 of 1990, which was filed in 1990. He also contended that in view of the factual finding that there was no proper enquiry, the Labour Court is fully justified in ordering reinstatement and that the learned single Judge is perfectly right in confirming the same.

8. We have perused the materials and carefully considered the rival contentions. It is not in dispute that as against the order of dismissal, the 2nd respondent/workman raised Industrial Dispute in I.D. No.73 of 1985 on the file of the Labour Court, Coimbatore. Though a counter statement was filed in I.D. No.73 of 1985, admittedly, the Management did not seek for permission to lead evidence in the event of the labour court coming to the conclusion that the domestic enquiry was not properly conducted. A perusal of the counter affidavit of the Society do not reveal anything except some bald statements and denial of the workman's plea by the Management. It is not in dispute that a preliminary issue regarding validity of the domestic enquiry was heard by the Labour Court and the same was argued on 5.9.1990. It is also not in dispute that after the said issue was posted for orders, the Society filed I.A. No.233 of 1990 for re-opening the preliminary issue. Even in that Application, admittedly, nothing has been stated about permission to lead fresh evidence. Only on 19.10.1990, the Society filed another Application in I.A. No.258 of 1990, seeking permission to file additional counter statement. Even in the affidavit fled in support of the above Application, no reason has been stated except the bald statement that "..... Since due to some unavoidable and inadvertent mistake, some salient features relating to the point at issue were omitted in my counter statement, it has become imperative necessity on my part to file the additional counter statement. " For the said Application, the workman filed counter statement, disputing the claim of the Management. In the said counter, the workman has specifically stated that I.A. No.258 of 1990 amounts to a fresh application seeking permission to lead fresh evidence. It is also stated that since the workman has filed the claim statement on 19.2.1984 itself, the Management ought to have stated in the main counter statement

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that they may be permitted to lead fresh evidence in case the domestic enquiry is set aside by the labour court; and that having waited for nearly five years, the Management should not be allowed to file additional counter statement with the prayer to lead fresh evidence to prove the charges. It is further stated that their mistake cannot be rectified after lapse of five years that too when the case is reserved for award on preliminary issues. By order dated 28.11.1990, the Labour Court accepted the objection raised by the workman and dismissed I.A. No.258 of 1990. Admittedly, the Society has not challenged the same. Finally, the Labour Court, by order dated 06.05.1991, accepted the case of the workman, allowed the I.D., and passed an order for reinstatement of the workman with continuity of service and backwages.

9. In 2001 (5) SCC 433 (Karnataka State Road Transport Corporation v. Lakshmidevamma), Constitution Bench of the Supreme Court has considered the question as to whether it is open for the management to seek the right of leading fresh evidence at any stage including at a stage where the Tribunal/Labour Court had concluded the proceedings and reserved its judgment on the main issue. The Constitution Bench considered various decisions including Shambhu Nath Goyal v. Bank of Baroda ((1983) 4 SCC 491). The following conclusion of the Supreme Court is relevant and it is extracted hereunder:-

> " 16. While considering the decision in Shambhu Nath Goyal case we should bear in mind that the judgment of Varadarajan, J. therein does not refer to the case of Cooper Engg. However, the concurring judgment of D.A.Desai, J. specifically considers this case. By the judgment in Goyal case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.
>
> 17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/labour Court, we are of the opinion that the directions issued by this court in Shambhu Nath Goyal case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal case. It is to be noted that this judgment was delivered on 27.9.1983. It has taken note of almost all the earlier judgements of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see that a long-standing decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda is the correct law on the point. "

After holding so and finding that the employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated; and applying the aforesaid principles; the Hon'ble Supreme Court dismissed the Appeal filed by the Management viz., Karnataka State Road Transport Corporation.

10. No doubt, learned counsel appearing for the appellant pressed into service the concurring but separate Judgment of Shivraj V. Patil, J. (as His Lordship then was). In paragraph No.45, it has been observed as follows:-

" 45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice. "

By referring the same, it is pointed out that the petitioner, having sought for permission to lead evidence, the Labour Court ought to have accepted the same.

11. Mr. Sanjay Mohan has also very much relied on a decision of the Supreme Court reported in Divyash Pandit v. NCCBM (2005 (2) SCC 684). Para No.8 of the said Judgment is pressed into service, which reads as follows:-

" 8. The appellant has challenged this decision of the High Court before us. We are of the view that the order of the High Court dated 2.12.2002 as clarified on 3.3.2003 does not need any interference. It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in Karnataka SRTC v. Laxmidevamma (2001 (5) SCC 433) this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman. "

12. Emphasising the principles laid down in the above referred cases, Mr.Sanjay Mohan argued that even though the Management inadvertently failed to seek permission in the original counter, since it filed a separate petition, seeking permission before

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

conclusion of the proceedings, the Labour Court ought to have afforded an opportunity to lead fresh evidence.

13. It is true that in the event of the Labour Court/Tribunal coming to the conclusion that the Domestic Enquiry is defective, it is but proper to afford one more opportunity to the Management, provided such request is made at the earliest point of time. Such condition is to enable the workman to come prepared to rebut the proposed action of the management. The following conclusion in Neeta Kaplish v. Labour Court (Vol.94 (1999) FJR 83) is relevant,

> " In Bharat Forge Co. Ltd. v. A.B.Zodge (1996) 88 FJR 736, as also in United Planters Association of Southern India v. K.G.Sangameswaran, (1997) 90 FJR 454, it was laid down that the Labour Court or the Tribunal can take fresh evidence on merits of the charge if it comes to the conclusion that the domestic enquiry was not properly held and the principles of natural justice were violated.
>
> In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence."

14. In the decision reported in (1975) 2 SCC 661 (Cooper Engineering Ltd. v. P.P. Mundhe), the Hon'ble Supreme Court has held that duty is cast on the Labour Court to inform of the violation and given opportunity to the employer to adduce evidence before conclusion of the proceedings.

15. The legal position emerging from the above decisions is that if the Domestic Enquiry is found to be defective, the employer must be given an opportunity to lead evidence. However, affording opportunity is not automatic in every case. In the case on hand, it is not in dispute that industrial dispute has been raised by the Workman even as early as in 1985. Though counter statement was filed

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

in the year 1990, admittedly, the Society failed to seek permission to lead additional evidence. As said earlier, in the counter affidavit of the Society, except some bald statements and denial of the workman's plea, no request was made to lead additional evidence. It is relevant to note that even at the time when the Labour Court heard the preliminary issue regarding validity of the Domestic Enquiry and when the matter was argued in September, 1990, no such permission was sought for. As a matter of fact, in order to reopen the issue relating to preliminary enquiry, the Society filed I.A. No.233 of 1990. Even in that Application, admittedly, no such permission was sought for to lead fresh evidence. Only in October, 1990, the Society filed I.A. No.258 of 1990, seeking permission to file additional counter statement. Even in the affidavit filed in support of that Application, the Society has not adduced sufficient reasons except stating that due to some unavoidable and inadvertent mistakes, certain salient features relating to the point at issue were omitted in the counter affidavit, hence, it had become necessary on their part to file additional counter statement.

16. As rightly pointed out by Mr.D.Hariparanthaman, even at that stage, the Society did not come forward with a request for adducing additional evidence. Taking note of lapse of five years and also the objection of the Workman, the Labour Court, on going through the factual details and relevant materials, found that the objection of the Workman is well founded and dismissed I.A. No.258 of 1990 filed by the Society. Though the learned Judge observed that the Society ought to have challenged the order passed by the Labour Court in I.A. No.258 of 1990 by filing a separate writ petition, we are of the view that such observation/conclusion is not acceptable, since even in the absence of a separate writ petition, inasmuch as the order passed in the interim application merges with the main award, the same can be agitated in the writ petition filed against the final award of the Labour Court. Though we disagree with the view of the learned Judge that the Society ought to have filed a separate writ petition against the order in I.A. No.258 of 1990, in view of our discussion, we find that there is no bona fide in the claim of the Society.

17. In the Constitution Bench decision of the Supreme Court reported in 2001 (5) SCC 433 (cited supra), Their Lordships upheld the dictum laid down in Shambhu Nath Goyal's case (cited supra). We consider it relevant to extract the observation made in paragraph No.16 at page-18 of the decision reported in Shambhu Nath Goyal v. Bank of Baroda ,

> " .. the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under S.10 or S.33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it. .."

The said conclusion in Shambhu Nath Goyal case was considered by the Constitution Bench in Karnataka State Road Transport Corporation vs. Smt.Lakshmidevamma [cited supra]. After referring to all the earlier case laws on this subject, majority view of the Hon'ble Constitution Bench is as follows, in Para.29 at page 110:

" For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal V. Bank of Baroda [1984 (1) L.L.N.8) (vide supra) is the correct law on the point. "

We are also conscious of the view expressed by Shivraj V. Patil, J. in the said Constitution Bench Judgment with reference to the powers of the Labour Court/Tribunal requiring or directing the parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case, it is deemed just and necessary in the interest of justice. It is clear that though the Labour court/Tribunal has power to grant permission at anytime to lead evidence before conclusion of the proceedings, it depends upon facts and circumstances of each case.

18. In the case on hand, we have already referred to the fact that the workman raised industrial dispute by filing I.D. No.73 of 1985; that the Society filed counter statement only after a period of five years, ie., in 1990; and that no request was made in the original counter affidavit or in the subsequent interlocutory application to lead additional evidence. In such circumstances, as observed by the Hon'ble Constitution Bench, in Karnataka State Road Transport Corporation case, though the Labour court has power to grant permission to lead additional evidence before completion of the proceedings, we are of the view that the Management/Society has not adduced sufficient reasons for the delay and we are satisfied that the Labour Court has rightly exercised its discretion by dismissing the Application filed by the Management. Similar view has been expressed by one of us (P.S., J.) in 2002 (2) L.L.N. 720 (Management of Easun Machine Tool Works vs. P.O.) and the same is in consonance with the Constitution Bench decision of the Supreme Court.

19. In the decision reported in 2003 (4) LLN 1128 (Caterpillar (I) (P.) Ltd. vs. P.O., II Addl. L.C.), a Division Bench of this Court, after considering the fact that the Management has not sought for permission to lead evidence in the written statement but made only oral request, has concluded as follows:-

https://hcservices.ecourts.gov.in/hcservices/

" Admittedly, the appellant-company did not seek permission of the Labour Court to lead evidence in the written statement filed before the Labour Court, but the case of the appellant-company is that it made an oral request before the Court. We are of the view, the decision of the Supreme Court in Lakshmidevamma case would squarely apply to the facts of the case and having failed to make such a request in the written statement filed by it, it is futile on the part of the appellant to contend that an oral request was made and on the basis of the oral statement, the Labour Court should have granted the opportunity to the management to lead further evidence and cover up the shortcoming in the enquiry.

In the absence of proper explanation by the Management/Society, we are in entire agreement with the conclusion of the Division Bench.

20. We reiterate the legal position that the Management is entitled to lead evidence provided such request is made at the earliest point of time and even if there is any delay, the same is to be permitted if proper and sufficient reason is shown. In view of our conclusion that there is no proper explanation or bona fide for such a long delay in seeking permission to lead fresh evidence, we hold that the Management/Society has lost its opportunity. These aspects have been correctly considered by the Labour Court as well as the learned single Judge and the claim of the Society was correctly negatived. We also hold that even in the absence of separate writ petition, questioning the order passed in the interlocutory application, the management is free to urge the same in the Writ Petition filed against the final award of the Labour Court.

21. In these circumstances, we do not find any merit in the Writ Appeal and the same is dismissed. No costs.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer, Labour Court, Coimbatore-641 018.

+ one cc to Mr.S.Ramasubramanian Associates Sr.No.18708.
+ one cc to Mr.D.Hariparanthaman, Advocate Sr.No.17939.

AK (CO)
RSM/24.4.2006.

WA No.1946 of 1999.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/